



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159574

PRELIMINARY RECITALS

Pursuant to a petition filed August 02, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner timely requested replacement FS benefits after a power outage.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner is the only person in her household. She receives \$189 in monthly FS benefits.
2. Petitioner lost power from June 30, 2014 to July 1, 2014.

3. On July 25, 2014 Petitioner filed an application for replacement FS benefits to replace food lost during her power outage. Petitioner did not orally report this loss to the agency prior to her July 25, 2014 application.
4. On July 25, 2014 the agency denied Petitioner's application for replacement FS benefits because it was not timely.
5. On August 1, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5.

In this case the only issue is whether Petitioner's application for replacement FS benefits was timely. There is no dispute that Petitioner lost power and no dispute that Petitioner lost food during this multi-day power outage. The agency denied Petitioner's application for replacement FS benefits because Petitioner did not file her application until 24 days after her power outage. This is well beyond the statutory 10 day time limit.

Petitioner argued that she is disabled and on oxygen. She states that she has a caregiver and that her caregiver could not give her a ride until July 25, which was 24 days after her power outage. Petitioner's argument is that because she is disabled and has transportation problems the 10 day requirement should not apply to her. This is an equity argument. There is no provision in the statute that allows a person with a disability additional time beyond the 10 day statutory time limit. I further note that Petitioner could have reported the loss over the phone, and mailed in the application with verification of her power outage.

Regardless The Division of Hearings and Appeals has no equitable powers. As an administrative agency, the Division of Hearings and Appeals "has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates." *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). This finding is consistent with the state supreme court's earlier statement that "[n]o proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944). Because there is no explicit basis in the law for granting Petitioner additional time to file an application for replacement FS benefits due to her disability, I must deny the petitioner's request.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for replacement FS benefits as untimely.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of September, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 3, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability